84-1961

Office-Supreme Court, U.S.
FILED
JUN 24 1985
ALEXANDER L. STEVAS,
CLERK

NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

ALAN W. WOLF AND GAIL S. WOLF,

PETITIONERS

V.

RICHMOND COUNTY HOSPITAL AUTHORITY,

RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI

WYCK A. KNOX, JR.
(Counsel of Record)
TED H. CLARKSON
KNOX & ZACKS
Post Office Box 2043
Augusta, Georgia 30903
(404) 724-2622

BEST AVAILABLE COPY

28 pp

I. QUESTION PRESENTED FOR REVIEW

Whether the United States District Court for the District of South Carolina can exercise personal jurisdiction over the Richmond County Hospital Authority, a public authority created by the Georgia Legislature, in an action concerning an alleged tort committed in Georgia between parties who were then Georgia residents given the following circumstances:

1) The Richmond County Hospital Authority derives one fifth (1/5) of its revenue from South Carolina residents who come to Georgia for treatment.

2) Richmond County Hospital Authority's hospital is listed in the North Augusta, South Carolina yellow pages.

3) Richmond County

Hospital Authority has a laundry service contract with an Edgefield County, South Carolina hospital.

4) Richmond County Hospital Authority is within the jurisdiction of the East Central Georgia Health Services Agency, which agency has an impact on the distribution of health care resources in portions of Georgia and South Carolina pursuant to federal law, 42 U.S.C. §300L et seq.

TABLE OF CONTENTS

		PAGE
I.	QUESTION PRESENTED FOR REVIEW	i
II.	TABLE OF CONTENTS	iii
III.	TABLE OF AUTHORITIES	iv
IV.	STATEMENT OF THE CASE	1
V.	SUMMARY OF THE ARGUMENT	4
VI.	ARGUMENT	5
	A. LEVEL OF CONTACTS NECESSARY TO JUSTIFY THE EXERCISE OF JURISDICTION OVER THE AUTHORITY.	5
	B. THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT CORRECTLY FOUND THAT THERE WERE INSUFFICIENT CONTACTS TO WARRANT THE EXERCISE OF JURISDICTION OVER THE AUTHORITY.	7
VII.	CONCLUSION	18
VIII.	CERTIFICATE OF SERVICE	20

CITATION OF AUTHORITIES

CASES

	PAGES
Aylstock v. Mayo Foundation, 341 F.Supp 560 (D.Mont. 1972)	10
Cubbage v. Merchent, 732 F.2d 1476 (9th Cir. 1984)	11
Gelineau v. New York University Hospital, 375 F.Supp 661, 667 (D.N.J. 1974)	10
Glover v. Wagner, 462 F.Supp 308 (D.Neb. 1978)	10
Hardy v. Pioneer Parachute Company, 531 F.2d 193 (4th Cir. 1976)	6
Helicopteros Nacionales de Columbia, S.A. v. Hall, 104 S.Ct. 168 (1984)	7
Hume v. Durwood Medical Clinic, Inc., 318 S.E.2d 119 (S.C.App. 1984)	10, 15, 16

Hutton v. Piepgras,
451 F.Supp. 205 (S.D.N.Y. 1978) 10

International Shoe Company v.
Washington, 326 U.S. 310 (1945) 6

Kailieha v. Hayes,
536 P.2d 568 (Hawaii 1975) 11

Kathrein v. Parkview Meadows, Inc.,
102 N.M. 75, 691 P.2d 462 (N.M. 1984) 11

Kennedy v. Zeismann,
526 F.Supp. 1328 (E.D.Ky. 1981) 12

Kurtz v. Draur
434 F.Supp. 958 (E.D.Pa. 1977) 10

Lemke v. St. Margaret Hospital,
552 F.Supp 833 (N.D.Ill. 1982) 11

McAndrew v. Burnett,
374 F.Supp 460 (M.D.Pa. 1974) 10

Triplett v. R. M. Wade and Company,
261 S.C. 419, 200 S.E.2d 375 (1973) 6

Wright v. Yackley,
459 F.2d 287 (9th Cir. 1972) 10, 14

STATUTES

42 U.S.C. § 300L et seq.	ii, 13
S.C. Code Ann. § 36-2-802	6

STATEMENT OF THE CASE

This is a medical malpractice action brought against the Richmond County Hospital Authority (hereinafter "Authority"), an entity created by the Georgia legislature, which owns and operates University Hospital in Augusta, Georgia. The petitioners allege negligence on the part of the Authority in the caesarean section delivery of their son and his treatment thereafter at University Hospital. The Authority denies all allegations of negligence.

At the time of the delivery and the treatment of the child, the petitioners were residents of the State of Georgia. All services rendered to the child were performed in the State of Georgia. When the petitioners failed to pay the hospital for services rendered, the Authority filed suit against them in Georgia and perfected

service on them in Georgia. The petitioners counterclaimed for malpractice in the Georgia court.

Despite the pendency of their malpractice claim in the Georgia court, the petitioners, who had since moved to South Carolina, filed this action in the United States District Court for the District of South Carolina. The Authority answered and moved for dismissal for lack of personal jurisdiction. The District Court denied the motion, but the Court of Appeals for the Fourth District Circuit reversed and granted the motion to dismiss.

The jurisdictional facts on which the Court of Appeals based its decision were stated in the District Court's order and are as follows:

> 1. The South Carolina Department of Health and Environmental Control (DHEC) has authorized Augusta Hospital to receive payments from the State of South Carolina for residents

of Aiken County, South Carolina, seeking certain maternity and neonatal services at University Hospital.

2. University Hospital received payments from Aiken County Council as reimbursement for treatment of residents of Aiken County who are indigent.

3. Although Richmond County Hospital Authority has no hospital or medical facility located in South Carolina, the University Hospital does receive medicaid/medicare reimbursements for qualified South Carolina residents treated at University Hospital.

4. University Hospital is listed in the yellow pages of the telephone directory for North Augusta, South Carolina, a city located in Aiken County, South Carolina.

5. University Hospital is under contract to provide laundry services to the Edgefield County Hospital in South Carolina.

6. University Hospital derives a substantial amount of revenue from treatment of South Carolina residents; defendant admitted in oral argument that approximately one-fifth (1/5) of University Hospital's income is obtained from South Carolina residents.

(Appendix to Petition for Writ of

Certiorari at 36-37)

The District Court also found that South Carolina residents were required to seek secondary and tertiary level care from University Hospital because of the hospital's membership in the East Central Georgia Health Services Agency (App. 37). The Court of Appeals held this finding to be clearly erroneous (App. 20), and the petitioners do not challenge that conclusion in their petition.

SUMMARY OF THE ARGUMENT

The issue in this case is whether the United States District Court for the District of South Carolina can exercise personal jurisdiction over a Georgia hospital authority for an alleged tort committed, if at all, in the State of Georgia between what were then Georgia residents. The facts established before

the District Court do not show that the Authority solicited South Carolina residents, but rather that South Carolina residents unilaterally came to Georgia to be treated at the hospital and that the hospital received payment for that treatment. The only contact of the Authority in the State of South Carolina, as opposed to South Carolina residents' contacts with the Authority in Georgia, was a laundry service contract with an Edgefield County, South Carolina hospital. That contact is de minimis. Accordingly, the evidence failed to prove contacts of a systematic or continuous nature necessary to subject the Authority to the jurisdiction of the court in South Carolina.

ARGUMENT

I. LEVEL OF CONTACTS NECESSARY TO JUSTIFY

THE EXERCISE OF JURISDICTION OVER THE AUTHORITY.

The South Carolina Long-Arm Statute, S.C. Code Ann. § 36-2-802, extends the jurisdiction of the South Carolina courts to the limits of the due process guaranties of the Fourteenth Amendment; therefore, the issue in this case is whether due process prohibits the exercise of jurisdiction over the Authority. See Hardy v. Pioneer Parachute Company, 531 F.2d. 193 (4th Cir. 1976); Triplett v. R. M. Wade and Company, 261 S.C. 419, 200 S.E.2d. 375 (1973). Due process permits the exercise of personal jurisdiction over a non-resident only if the non-resident has had minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. International Shoe Company v. Washington, 326 U.S. 310 (1945). In a tort action where the tort was not

committed in the forum state, the minimum contacts must be of a "continuous and systematic" nature. Helicopteros Nacionales de Columbia, S.A. v. Hall, 104 S.Ct. 1868 (1984).

The undisputed facts in this case show that the plaintiffs were Georgia residents at the time their son was treated at the Authority's hospital and that all treatment was performed in Georgia. Under the standard discussed above, the District Court could exercise personal jurisdiction over the Authority in this tort action only if the petitioners proved that the Authority had contacts with South Carolina that were of a "systematic and continuous" nature.

II. THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT CORRECTLY FOUND THAT THERE WERE INSUFFICIENT CONTACTS TO WARRANT THE EXERCISE OF

JURISDICTION OVER THE AUTHORITY.

The six findings of fact upheld by the Court of Appeals can be grouped into roughly three categories. The first, second, third and sixth findings demonstrate that University Hospital treats South Carolina residents and receives payment for such treatments. The fourth finding of fact establishes that the hospital is listed in the yellow pages of North Augusta, South Carolina. The fifth finding shows a laundry service contract between the Authority and an Edgefield County Hospital. Additionally, the evidence shows that the Authority is subject to the jurisdiction of the East Central Georgia Health Services Agency, which coordinates the distribution of health care resources in a district which includes portions of Georgia and South Carolina. These facts do not establish contacts of a continuous and systematic

nature in South Carolina.

With regard to the treatment of South Carolina residents, the plaintiffs have failed to prove anything other than the fact that South Carolina residents voluntarily and unilaterally come to Georgia to seek care at University Hospital. This fact does not show purposeful conduct on the part of the Authority in South Carolina, but rather shows purposeful conduct on the part of South Carolina residents in the State of Georgia. Such facts routinely have been held to be insufficient to establish personal jurisdiction over non-resident health care providers.

> Unlike a case involving voluntary interstate or international economic activity . . . the residence of a recipient of personal services rendered elsewhere is irrelevant and totally incidental to the benefits provided by the defendant at his own location. It is clear that when a client or a patient travels to receive professional services without

> having been solicited . . . then the client, who originally travelled to seek services apparently not available at home, ought to expect that he will have to travel again if he thereafter complains that services sought by him in the foreign jurisdiction were therein rendered improperly.

Gelineau v. New York University Hospital, 375 F.Supp. 661, 667 (D.N.J. 1974).

Accordingly, the courts have generally held that they cannot exercise jurisdiction over non-resident health care providers for torts allegedly committed in the state where the health care provider resides. See, Wright v. Yackley, 459 F.2d 287 (9th Cir. 1972); Glover v. Wagner, 462 F.Supp. 308 (D.Neb. 1978); Hutton v. Piepgras, 451 F.Supp. 205 (S.D.N.Y. 1978); Kurtz v. Draur, 434 F.Supp. 958 (E.D.Pa. 1977); McAndrew v. Burnett, 374 F.Supp. 460 (M.D.Pa. 1974); Aylstock v. Mayo Foundation, 341 F.Supp. 560 (D.Mont. 1972); Hume v. Durwood Medical Clinic,

Incorporated, 318 S.E.2d. 119 (S.C.App. 1984); Kailieha v. Hayes, 536 P.2d. 568 (Hawaii 1975).

The petitioners seek to avoid the general rule by citing Lemke v. St. Margaret Hospital, 552 F.Supp. 833 (N.D.Ill. 1982); Cubbage v. Merchent, 732 F.2d. 1476 (9th Cir. 1984) cert. denied, 105 S.Ct. 1359 (1985); and Kathrein v. Parkview Meadows, Inc. 102 N.M. 75, 691 P.2d. 462 (N.M. 1984). These cases are not applicable because the health care providers in those cases had affirmatively solicited out-of-state patients. Because of the solicitations, a purposeful contact, the courts found the health care providers to be subject to the jurisdiction of the courts in the patients' home state. Solicitation has not been found in this case. The District Court did not find any solicitation. The Court of Appeals also concluded that the Authority did not

solicit South Carolina residents as patients, and on that basis, the Court of Appeals distinguished the cases relied upon by the petitioners.

The petitioners place a great deal of emphasis on the listing of University Hospital in the North Augusta, South Carolina telephone directory. They contend that this fact constitutes a contact with South Carolina sufficient to support jurisdiction. Petitioners, however, ignore the reality that the listing does not show a purposeful contact by the Authority with South Carolina but rather illustrates the proximity of and the close ties existing between Augusta, Georgia and North Augusta, South Carolina. Without purposeful activity on the part of the hospital, this contact does not support the exercise of jurisdiction. See, Kennedy v. Zeismann, 526 F.Supp. 1328 (E.D.Ky. 1981).

The only true contact of the Authority with South Carolina is the laundry contract between the Authority and an Edgefield County, South Carolina hospital. This contact is an isolated instance of the Authority conducting activities in South Carolina. It is totally unrelated to the malpractice action being prosecuted by the petitioners. As described by the Court of Appeals, this contact is "de minimis" and insufficient to justify the exercise of jurisdiction over the Authority by the District Court sitting in South Carolina (App. 26).

The final set of facts involves the East Central Georgia Health Services Agency, an agency created by federal law, 42 U.S.C. § 3001 et seq. That agency does not force Aiken County residents to seek hospital care from University Hospital. The agency merely attempts to coordinate the development of health care facilities

in its district, which happens to include portions of Georgia and South Carolina. The mere fact that the Authority complies with the requirements of federal law with regard to health care planning does not in any way indicate purposeful activity in South Carolina such as would justify personal jurisdiction over the Authority by the District Court in South Carolina.

As shown above, the facts found by the District Court do not constitute contacts of a continuous and systematic nature with South Carolina. This finding alone supports the Court of Appeals' conclusion that due process precludes the exercise of jurisdiction over the Authority. Nevertheless, there are additional and compelling reasons why the Court of Appeals' decision is correct.

The ready availability of medical care is an important aspect of a state's public policy. Since the case of Wright v.

Yackley, supra, the courts have recognized that forcing health care providers to defend their conduct in foreign courts can have a chilling effect on the ability of persons to seek health care outside their own state. In Hume v. Durwood Medical Clinic, Incorporated, supra, the South Carolina Court of Appeals considered whether the South Carolina courts could exercise jurisdiction over a North Carolina medical clinic and two of its staff physicians. In deciding that the South Carolina courts could not exercise such jurisdiction, the court recognized the public policy reasons for declining to exercise jurisdiction.

> South Carolina's interest in providing her citizens with a convenient forum for the vindication of torts imposed at the hands of nonresidents must be balanced by its countervailing interest of insuring that its residents receive adequate medical services to meet their needs wherever they may be required to go to receive it. Wright v. Yackley, supra.

. . .

> Considering the tenuous character of the relationship between the appellants and South Carolina, in light of this State's interest in providing service of process over nonresidents to its injured citizens, in tandem with the chilling effect that the exercise of jurisdiction over the appellants could have on the availability of medical services in South Carolina, we conclude that the assertion of personal jurisdiction over the appellants would be unreasonable under the circumstances of this case.

Hume v. Durwood Medical Clinic 318 S.E.2d at 123.

Contrary to the petitioners' representation in their brief, the South Carolina Supreme Court has dismissed the writ of certiorari in the Hume decision. Accordingly, the Hume decision stands as a firm evidence that South Carolina has decided that its public policy does not favor the exercise of jurisdiction over out-of-state health care providers who merely treat South Carolina residents. In

light of this policy, it would be illogical for the United States District Court, using the South Carolina Long-Arm Statute, to exercise jurisdiction over the Authority in this case.

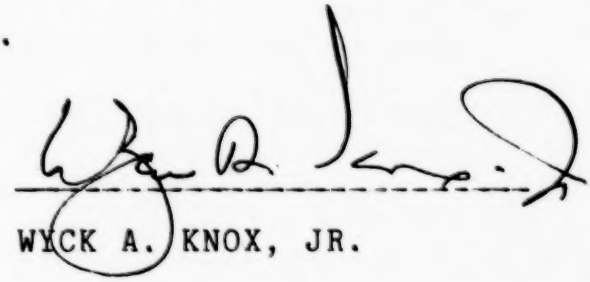
The final factor supporting the Court of Appeals' decision is the ready access of the petitioners to a forum in which their complaint can be heard. At the present time, the petitioners are asserting their malpractice claims in the Georgia courts. This is not a case where the petitioners would have to suffer any undue burden, such as travelling across the country, to pursue their claims. A forum with jurisdiction over the Authority is not only available to petitioners, but is presently being utilized by the petitioners. There is no reason to stretch the "traditional notions of fair play and substantial justice," to include the exercise of jurisdiction over the Authority by the District Court in

South Carolina.

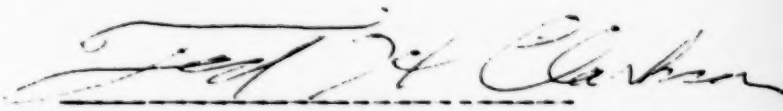
CONCLUSION

The evidence before the District Court and considered by the Court of Appeals establishes that the Authority does not have contacts with the State of South Carolina of a continuous and systematic nature. Rather, the hospital operated by the Authority merely treats South Carolina residents who voluntarily come to Georgia seeking medical care. Accordingly, the Court of Appeals correctly decided that the District Court could not exercise personal jurisdiction over the Authority in this medical malpractice action arising from an alleged tort committed, if at all, within the State of Georgia. On this basis, the Richmond County Hospital Authority requests that the Court deny the petition for writ of certiorari.

RESPECTFULLY submitted this 21st day of June, 1985.



WYCK A. KNOX, JR.



TED H. CLARKSON

OF COUNSEL:

KNOX & ZACKS

Post Office Box 2043

Augusta, Georgia 30903

(404) 724-2622

CERTIFICATE OF FILING BY MAIL
AND SERVICE UPON OPPOSING PARTY

I hereby certify that pursuant to Rule 28.2, I have this day deposited forty (40) copies of the attached petition for writ of certiorari in the United States Post Office, in a package with proper first class postage attached, the same being addressed to the Clerk of the United States Supreme Court, 1 First Street, N.E., Washington, D.C. 20543.

Further, I hereby certify that I have on this same day deposited in a United States Post Office, with proper first class postage attached, three (3) copies of the attached petition for writ of certiorari to each of the following parties:

Mr. A. Camden Lewis

Daryl G. Hawkins

Post Office Box 11208

Columbia, South Carolina 29211

This 21st day of June, 1985.

WYCK A. KNOX, JR.

Signed, sealed and subscribed before me this 21st day of June, 1985.

NOTARY PUBLIC, at large.

~~County~~, Georgia

MY COMMISSION EXPIRES DEC. 12, 1988

(SEAL)